

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON

No. 79834-6

2001 OCT -5 A 9:43

BY RONALD R. GARDNER

---

**SUPREME COURT OF THE STATE OF WASHINGTON**

---

JAYSON LOREN EDWARD BUSH

Appellant,

vs.

STATE OF WASHINGTON

Respondent.

---

**ERRATA TO PETITION ~ VERBATIM REPORT OF  
PROCEEDINGS DATED JANUARY 8, 2007**

---

TIMOTHY D. TRAGESER, WSBA # 18704  
MARLA L. POLIN, WSBA #36657  
Trageser Law Office, P.S.  
1428 W. Northwest Blvd.  
Spokane, WA 99205  
(509) 327-3993

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

17  
18  
19  
20  
21  
22  
23  
24  
25

21  
22  
23  
24  
25

24

25

1 THE COURT: Good morning, ladies and gentlemen. This  
2 morning we have -- I believe we have a gentleman on the  
3 line. I think it's Mr. Mitchell from the Governor's  
4 office; is that correct, sir?

5 MR. MITCHELL: Good morning, Your Honor. Yes, I'm  
6 present.

7 THE COURT: Good morning. Can you hear me okay?

8 MR. MITCHELL: I can. Thank you.

9 THE COURT: Before we go further, I don't see the mics.  
10 Are the mics out? I would like that's one mike. I'd like  
11 the parties to say good morning and introduce themselves  
12 to make sure that Mr. Mitchell can hear us.

13 Ms. Fitzgerald.

14 MS. FITZGERALD: Thank you, Your Honor.

15 For the record for the State of Washington, Kelly  
16 Fitzgerald.

17 THE COURT: Ms. Polin.

18 MS. POLIN: Marla Polin. I will be handling this  
19 hearing, as well as the trial.

20 THE COURT: Okay. Good morning. Mr. Trageser.

21 MR. TRAGESER: Tim Trageser, Your Honor, assisting  
22 Ms. Conrad and, also, present, Mr. Bush.

23 THE COURT: Thank you.

24 Mr. Mitchell, could you hear those voices okay?

25 MR. MITCHELL: Yes, I can. Thank you.

1 THE COURT: Okay. Thank you. This is the matter  
2 before us this morning of the State of Washington versus  
3 Jayson Bush, cause number 06-1-01206-3.

4 We're here this morning on several matters. This is  
5 the day when we want to continue our jury selection  
6 process. The large jury pool has been sworn already, and  
7 some of the process has started.

8 In addition to that, and preliminarily we're at this  
9 point, we have Mr. Mitchell from the Governor's office on  
10 the line.

11 The reason -- I want to make a comment on the record.  
12 The reason, and the sole reason, for Mr. Mitchell's phone  
13 attendance, which is greatly appreciated by this Court,  
14 and I thank you for that cooperation, is to obtain some  
15 information of the defendant's concern that would relate  
16 directly to any due process issues as they involve this  
17 case and only this case, the due process issues that may  
18 arise in the cause number I just gave you, which is the  
19 trial we're now addressing.

20 In that regard, Mr. Mitchell, we are on the record.  
21 You are not going to be sworn. You're not being requested  
22 to be sworn, and I don't intend to swear you. This is  
23 simply to generate some information so that we can go  
24 forward and see where we are in this particular case, and  
25 with that understanding, I don't know which of the two

1 attorneys, Ms. Polin?

2 MS. POLIN: Yes, Your Honor.

3 THE COURT: Ms. Polin may have some questions. Before  
4 we do that, Mr. Mitchell was under some significant time  
5 restraints. So to be as direct and brief as possible, I'm  
6 sure he'll appreciate that, as well as the Court; and,  
7 secondly, Mr. Mitchell, before we proceed, are there any  
8 comments that you want to make or any questions that you  
9 have?

10 MR. MITCHELL: Only a comment, and that is I will be  
11 somewhat circumspect if a question veers close to violate  
12 the attorney-client privilege.

13 THE COURT: And that would be appropriate to do that.

14 Now, Ms. Polin, I'm going to invite you to the podium  
15 to ask questions at this time.

16 MS. POLIN: Thank you, Your Honor.

17 EXAMINATION

18 BY MS. POLIN:

19 Q Good morning, Mr. Mitchell.

20 A Good morning, Ms. Polin.

21 Q As I had indicated earlier, I will be the attorney  
22 handling this hearing, as well as the trial, and I do  
23 appreciate you being present telephonically. I just have  
24 a few very brief questions for you.

25 As you're aware, the incident and date of this matter

1        was April 8, 2006. Mr. Bush was arraigned on the 18th,  
2        and at that time, trial was set for June 12, 2006. Were  
3        you aware of those dates?

4        A No, I wasn't.

5        Q Okay. You did not review those in my letter that I sent?

6        A They may have well have been those letters, but do they  
7        come to my mind now that states that I remembered, no.

8        Q Okay. So, originally, trial was set within the speedy  
9        trial limits of the 60 days. I sent your office a brief  
10       letter notifying you that our office did, indeed,  
11       represent Mr. Bush and asked that all future  
12       correspondence be sent to our office, and that notice was  
13       dated May 4, 2006, the same date that I received the  
14       Governor's letter.

15       Do you have a copy of that, Mr. Mitchell?

16       A I can attain a copy, but there's something in particular  
17       you'd like me to look at.

18       Q Well, in the May 4th letter, the Governor advised that  
19       Mr. Bush would be -- his conditional commutation would be  
20       revoked if the charges were not dismissed as of May 30,  
21       2006; is that correct?

22       A Well, I think for the benefit of everyone who's listening  
23       would be advisable to quote the language.

24       Q Okay.

25       A "As a direct consequence of your pending prosecution, I'm

1 writing to advise you that effective May 30, 2006, your  
2 conditional commutation is revoked subject only to  
3 showing -- a showing by you that charges against you have  
4 been dismissed prior to the effective date of this  
5 revocation."

6 Q So, Mr. Mitchell, my initial question would be has  
7 Mr. Bush's conditional commutation officially been  
8 revoked?

9 A As I wrote in my January 4, 2007 letter, yes.

10 Q Okay. As of what date?

11 A May 30, 2006.

12 Q Okay. And did you receive -- (pause) and did you receive,  
13 Mr. Mitchell, my letter dated May 10th?

14 A Ms. Polin, I received quite a few letters from you. I am  
15 not rifling through those letters now. If you sent me a  
16 letter and I've responded, and I've received it.

17 Q My file, my correspondence, and I'm showing the letter  
18 dated May 10th, May 17th, May 24th, August 4th and August  
19 28th, December 12th, December 26th, January 3rd and  
20 January 4th. Does that sound about right to you?

21 A Again, I'm not looking at all those letters, but if I  
22 responded to those letters and you sent them, then I've  
23 received them.

24 Q And I do have before me a copy of your January 4, 2007  
25 letter. That was your letter, correct? It's signed,

1 "Sincerely, Richard E. Mitchell, Melinda Campbell for  
2 Richard Mitchell?"

3 A That letter, the January 4th letter, is, as I've  
4 indicated, in the second to last paragraph on the second  
5 page in response to I think no fewer than four letters  
6 from you in less than 30 days.

7 Q Okay. Well, now, you said in less than 30 days, but you  
8 did receive my May 10th, May 17th and May 24th letters,  
9 correct?

10 A If you look on the second page of that same letter, the  
11 first two paragraphs, it refers to those letters.

12 Q Okay. So you did. The answer then would be, yes, you did  
13 receive my letters?

14 A Yes, I received those letters, and I've responded.

15 Q So my next question would be you've indicated there was no  
16 communication from either me or my client prior to May  
17 30th? I'm not really understanding that.

18 A Your question is not well put. The question rather should  
19 be communication about dismissal of the charges prior to  
20 May 30th.

21 Q Okay. So you are aware that Mr. Bush was scheduled for  
22 trial within speedy trial rights of June 12, 2006? That  
23 that was the original date of the trial set within the 60  
24 day limit, and, yet, the Governor is now adding the caveat  
25 that those charges be dismissed prior to that speedy trial

1       date; is that correct?

2       A   Well, I'm not entirely sure what the purpose of your  
3       reference to the trial dates are. I'm only focused on the  
4       Governor's revocation letter, which says that charges had  
5       to be dismissed prior to May 30th, and she did write that,  
6       and you have received that.

7       Q   And that would have allowed for 26 days to have this case  
8       dismissed?

9       A   Again, I am not commenting on the dates of the trial. I'm  
10      commenting on the Governor's revocation letter.

11      Q   Okay. So based on the Governor's commutation letter dated  
12      May 4th, my calculation to May 30th would be 26 days to  
13      have this completed, correct?

14      A   Again, I'm commenting only on the Governor's letter.

15      Q   Okay. Well, my calculations are that that would give us  
16      26 days. Are you aware that at that point, defendant had  
17      no discovery?

18      A   I'm not participating in the prosecution against your  
19      client. My client is the Governor, and I'm aware of what  
20      she wrote to your client.

21           THE COURT: Let me interject here. I think it's quite  
22      clear from Mr. Mitchell's comments and the record that  
23      we're establishing may be more directed to other issues  
24      than to the specific due process issues of this case.

25           What's important to the Court is I think been

1 developed, and that is that the Governor's letter is to be  
2 read, and the literal and factual reality of that letter I  
3 think is referenced in the letter of May 4, 2006 is pretty  
4 clear based upon the last sentence of that letter.

5 Is that -- the only question I have is that revocation,  
6 once done, a revocation that is absolute, it's over? The  
7 issue in your office is completed, and the revocation is  
8 in play and will stay in play?

9 MR. MITCHELL: That's correct, Your Honor.

10 THE COURT: Regardless of the outcome of the case?

11 MR. MITCHELL: That revocation is complete. This does  
12 not preclude Mr. Bush from returning to the Clemency and  
13 Pardons Board.

14 Okay. When you say absolute, I'm a little cautious  
15 because it doesn't mean to preclude him from ever  
16 appearing before the board again.

17 THE COURT: That's good clarification. I appreciate  
18 that. What I was, specifically, inquiring into and,  
19 again, it relates only to the due process issues of having  
20 a complete understanding of the defendant and the other  
21 parties here so we know where we are.

22 Regardless of the outcome of this case, that  
23 revocation, other than your understanding, the outcome of  
24 this case will not affect that revocation as it now  
25 exists.

1 MR. MITCHELL: That's correct.

2 THE COURT: Okay. That's what I need to know.

3 Do you have any further questions, Ms. Polin? We got  
4 to cut it short.

5 MS. POLIN: Just one brief question.

6 Q (By Ms. Polin) Mr. Mitchell, are you aware that I did  
7 attempt, in fact, to go before the Board of Clemency and  
8 Pardons prior to the May 30th deadline?

9 A We're talking about two different issues, Ms. Polin. I am  
10 aware of that, and I do recall Assistant General advising  
11 you that the Clemency and Pardons Board did not have  
12 authority to conduct a revocation hearing. The question  
13 being posed by the Court now is slightly different.

14 THE COURT: That's correct. It was a different  
15 question.

16 Q (By Ms. Polin) So I would just then ask for clarification  
17 of if we do proceed to trial and Mr. Bush is acquitted, is  
18 his conditional commutation still in effect or would he  
19 still remain revoked?

20 A It has been revoked.

21 THE COURT: And that's been answered. Do you have one  
22 more question?

23 Q (By Ms. Polin) So he will remain revoked even if he is  
24 acquitted of these charges?

25 THE COURT: That was the response. He will remain

1       revoked. Is that correct, Mr. Mitchell?

2           MR. MITCHELL: Yes, Your Honor.

3           THE COURT: Yes. That's been answered. In terms of  
4       the Court's position, I think we've developed the  
5       information necessary to determine due process issues. If  
6       any arise, we have the information developed to the point  
7       that I think they can be dealt with by the Court.

8           Ms. Polin, do you have anything further?

9       Q (By Ms. Polin) Mr. Mitchell, at the beginning of this  
10      hearing, you had indicated that the only thing you would  
11      not be willing to answer is if it affected attorney-client  
12      privilege.

13           Are you saying that you do represent Governor Gregoire?

14      A Ms. Polin, I was asked whether I had any comments or  
15      questions, and I said one comment would be that I would be  
16      somewhat circumspect about questions that go to the  
17      attorney-client privilege. I didn't comment on what I  
18      wouldn't answer, but if there are questions that are  
19      problematic, I may decline to answer them.

20      Q Do you represent Governor Gregoire?

21      A I am in the Governor's office.

22      Q Do you have the authority to speak for the Governor and  
23      make decisions and comments on her decisions?

24      A Depends on the question, Ms. Polin.

25           THE COURT: But the answers that have been given so

1 far, you're speaking on behalf of the Governor?

2 MR. MITCHELL: That's correct.

3 MS. POLIN: Okay. So, Your Honor, if I may, I have  
4 just a few ambiguities I wanted to clarify.

5 THE COURT: Very, very briefly.

6 Q (By Ms. Polin) In your September 26th letter, which was  
7 well after our original May 30th deadline, you had asked  
8 me to advise you of the status of the case, and I'm  
9 curious as to why, if he had already been revoked, why  
10 were you curious as to the status of our case?

11 A Ms. Polin, if you give me a moment.

12 THE COURT: Mr. Mitchell, let me interrupt. That I  
13 think goes to other issues. It doesn't necessarily go to  
14 anything I need to know at this point. So that doesn't  
15 need to be answered.

16 MS. POLIN: Your Honor, I'm trying to satisfy myself  
17 that he has, in fact, been revoked.

18 THE COURT: That's been asked and answered, and it's  
19 been answered by an individual who stated that he's  
20 speaking on behalf of the Governor. There may be matters  
21 and questions in your mind about it, inconsistency or no  
22 inconsistency or whatever, but they don't relate to the  
23 issue I need to deal with today in this case as I see.

24 So that, I mean, I don't intend this to be making a  
25 record for any other purpose.

1 MS. POLIN: And I understand that, Your Honor.

2 My only concern would be that up until Friday, there  
3 had been no indication that Mr. Bush had actually been  
4 revoked, and that would have been throughout  
5 Mr. Mitchell's letters. There have been no clarification,  
6 no official notification.

7 THE COURT: That's argument, and that can be postured  
8 as some point in time, but I don't need -- this isn't  
9 discovery. This is just generating information regarding  
10 the concern the Court has about what the Governor's  
11 position is on this matter, and I think that that's been  
12 developed, and we have it, and I don't see any need to go  
13 further.

14 If you have a question that relates directly to that,  
15 I'll allow it, but it's almost 20 minutes after, and I  
16 don't want to press the courtesies any further than we  
17 have to here.

18 Anything else.

19 Q (By Ms. Polin) My final question would only be will we be  
20 receiving any official notification of this revocation?

21 A Ms. Polin, I believe you received a letter in May of last  
22 year signed by the Governor to that effect.

23 Q Has the DOC or Mr. Weston seen, has anybody received any  
24 definitive paperwork that Mr. Bush has been revoked?

25 A Ms. Polin, the letter I have referred to has been

1 appropriately distributed.

2 Q And the letter that you refer to, also, says that Mr. Bush  
3 shall immediately be returned to the Washington Correction  
4 Center.

5 So then my question would, again, be why hasn't he been  
6 returned? Why hasn't there been any official  
7 notification?

8 A Ms. Polin, I cannot comment on that. I have no idea what  
9 you're referring to.

10 Q You have no idea about the May 4th letter?

11 THE COURT: Well, I think we're done.

12 Mr. Mitchell, I want to thank you for your cooperation,  
13 and I would appreciate it, and on my personal behalf, the  
14 Court's behalf, as well as the parties, if you'd extend  
15 our appreciation to the Governor for your cooperation.

16 I do believe I should request or at least give the  
17 opportunity if there are any questions on behalf of the  
18 State for clarification within the narrow scope that I've  
19 defined.

20 MS. FITZGERALD: There are not, Your Honor. I believe  
21 within that scope, that really the inquiry was between the  
22 Governor's office and defense counsel for them to inquire.  
23 I have nothing then.

24 THE COURT: Thank you.

25 MR. MITCHELL: Thank you, Your Honor.

1 THE COURT: If you would pause just a moment for us.  
2 Do you have anything within the narrow scope that I've  
3 defined? Anything further?

4 MS. POLIN: Not that I believe Mr. Mitchell would  
5 answer.

6 THE COURT: Okay. Thank you. Thank you very much,  
7 Mr. Mitchell.

8 MR. MITCHELL: Thank you, Your Honor.

9 THE COURT: Good-bye.

10 MR. MITCHELL: Good-bye.

11 THE COURT: For the record, my understanding of the  
12 information developed from this conversation with the  
13 Governor's office is that as of May 4th -- May 4th of '06,  
14 there was a -- an absolute revocation effective May 30,  
15 '06. Based upon whatever the foundation was or is  
16 available to the Governor at that time that that is a  
17 formal revocation, an official revocation.

18 Whether other matters have been done that tie that up  
19 more neatly or not or concerns that may be interesting  
20 towards the merits of any future problems, I don't know,  
21 but for purposes of this Court, it appears as though this  
22 defendant's pardon was revoked, and he is no longer  
23 carrying the status of being a pardoned defendant, and  
24 that the sentence has been reinstated, and that's the  
25 status of this gentleman at this time.

1           Now, we have other matters to go forward, and subject  
2           to the other answers that the Governor's office, as I  
3           understand the answer, that status won't change based upon  
4           the result of this trial. There are -- he left the door  
5           open for another hearing of some sort available to the  
6           defendant, but the defendant, from my understanding, and  
7           I'm not that familiar with the process, but it seems as  
8           though the defendant's only recourse would be back -- to  
9           go back in that process earlier that initially established  
10          the pardon. You have to go back through that process  
11          again. That was my understanding.

12          Any clarification to that?

13          MS. POLIN: Your Honor, if I can just make a brief  
14          Offer of Proof?

15          THE COURT: Sure.

16          MS. POLIN: Your Honor, the reason for the inquiries  
17          were we have significant doubts and issues as to in  
18          reality when Mr. Bush was revoked and whether or not this  
19          revocation is, indeed, final or if it were just  
20          conditional.

21          In one of Mr. Mitchell's letter, he, in fact, does  
22          refer to this as a conditional revocation. While he  
23          refused to answer many of my questions, I do, in fact,  
24          have four I believe letters all dated prior to the  
25          May 30th deadline. I have filed those with the Superior

1 Court file, and I believe Your Honor has a copy of them  
2 with my certificate, and, in fact, while he did not want  
3 to --

4 THE COURT: Let me just mention the conditional was I  
5 had thought that related to the caption on the pardon, I  
6 don't know what they call it, on the pardon. It's  
7 captioned conditional commutation, and I thought that he  
8 was referencing, and I could be totally wrong, but.

9 MS. POLIN: In Mr. Mitchell's May 23rd letter, which I,  
10 also, filed with the Court.

11 THE COURT: I got it.

12 MS. POLIN: This is to acknowledge receipt of my letter  
13 dated May 17th. Again, he, also, receives and he admits  
14 my May 10th letter, both of which would have been before  
15 the May 30th deadline in which you requested  
16 reconsideration of the Governor's conditional revocation  
17 of Mr. Bush's pardon.

18 At no time would Mr. Mitchell ever address any of my  
19 letters, and, again, this is prior to the deadline. So I  
20 have some very serious concerns, although now he states  
21 that Mr. Bush has been revoked, as to when he was actually  
22 revoked. No one has received official notification. I  
23 have a certificate from Governor Locke with the seal of  
24 the State of Washington that says that Mr. Bush had been  
25 pardon.

1 THE COURT: Conditionally.

2 MS. POLIN: Yes, but I have nothing from Governor  
3 Gregoire that he has been revoked, and, in fact,  
4 Mr. Mitchell has never come on the record until the 7th or  
5 actually on the record until today saying that, yes,  
6 Mr. Bush has been revoked.

7 THE COURT: But that was the purpose of this  
8 information quest?

9 MS. POLIN: Yes.

10 THE COURT: And I know your Offer of Proof. What I'm  
11 wondering is there's nothing this Court can do to go back  
12 and challenge, look at, weigh the merits of whatever those  
13 matters are to determine whether the weight of those, the  
14 validity of those decisions or the impact, that's really  
15 not before me.

16 The only thing that's before me is this case, and the  
17 fact that the Governor's office has taken the position  
18 that the revocation is formal and official and effective  
19 as of May 30th.

20 Now, there may be a lot of questions about that, but I  
21 just wanted to know what his position was, not to weigh  
22 that position on the merits to challenge it or not because  
23 that isn't before me. You may argue that for purposes of  
24 a motion that will be considered by the Court, that  
25 motions that relate to the process of this trial.

1 MS. POLIN: And, Your Honor, my concern, though, would  
2 be as it would relate to this trial that it has affected  
3 Mr. Bush's right to due process for the trial. It has  
4 affected his right.

5 THE COURT: So are you making a motion? I need to know  
6 where we're going with this? Is this a motion of some  
7 sort?

8  
9 (PAUSE IN PROCEEDINGS.)  
10

11 MR. TRAGESER: I have one.

12 THE COURT: Ms. Fitzgerald, Mr. Trageser has requested  
13 leave to speak.

14 MS. FITZGERALD: I have no problem with that, Your  
15 Honor.

16 THE COURT: Mr. Trageser.

17 MR. TRAGESER: Okay. Thank you.

18 Procedurally, I have a question as to whether or not  
19 we're properly before this Court, to be perfectly honest  
20 with you.

21 A government pardon is a very odd and unique and rare  
22 thing, and I'm curious if the Governor has the power to  
23 pardon and then the Governor has the power to revoke, do  
24 we, also, need permission from the Governor's office to  
25 prosecute individuals who are out on pardon, their pardon,

1 by virtue of statute, and when they are revoked by order  
2 of the Governor and by letter -- by Mr. Mitchell that  
3 we've indicated that he will be directly sent back to  
4 prison, he is still, in my opinion, under the jurisdiction  
5 of the Department of Corrections and to somewhat a degree  
6 the power of the Governor, and I question whether or not  
7 the State has the authority to prosecute Mr. Bush without  
8 the permission of the Governor's office, and we don't have  
9 that. He's under the jurisdiction of the Governor, so to  
10 speak, that a jurisdiction of the Department of  
11 Corrections, and before we do anything, I think there  
12 needs to be specific permission to allow the prosecution  
13 of this case from the Governor's office, and we don't have  
14 that, and so I just wanted to make that record.

15 With all due respect to Your Honor, I don't believe  
16 we're properly before this Court, and I question whether  
17 or not the Superior Court has jurisdiction to prosecute an  
18 individual who is under the direct control of the  
19 Governor, which is really, in essence, what Mr. Bush is  
20 because Mr. Mitchell put on the record things are always  
21 open for the Governor to reconsider. He's under the  
22 jurisdiction of the Governor at this point, and I'm not  
23 sure that we can proceed.

24 It's, again, to say Mr. Bush being in federal custody  
25 or custody from another state and needing a Governor's

1 warrant. We really, in essence, this is not an  
2 extradition matter, but I believe we need a Governor's  
3 warrant or the Governor's position since she revoked him  
4 and ordered that he would go back to prison to prosecute  
5 Mr. Bush, and we don't have that, Judge, and without that  
6 today, I'd be moving to dismiss this case.

7 THE COURT: I wonder what the last sentence of page two  
8 of the May -- I'm sorry -- of the January 4, 2007 letter,  
9 that sentence reads as follows:

10 "Mr. Bush is free to consider plea agreements and or go  
11 to trial knowing the Governor has revoked his conditional  
12 commutation."

13 Is that something the Court can take and infer from  
14 that that the Governor's office has released this  
15 defendant to this Court for these charges seeing as the  
16 statement based by my reading, "Mr. Bush is free to  
17 consider plea agreements and or go to trial," because I  
18 was concerned about that. I've been reading this more  
19 than once just to see if I could understand it a little  
20 better. I don't know.

21 MS. FITZGERALD: Well, I guess, Your Honor, from the  
22 State's perspective in light of what Mr. Mitchell said  
23 this morning, as much as I can interpret it, I believe if  
24 the commutation has been revoked, it's not under the  
25 Governor anymore. Mr. Bush is in DOC custody, and if I,

1 as the State, wants to prosecute someone in DOC custody, I  
2 merely do a transfer order, put him in this jail. Bond  
3 would be set, and we'd proceed from there.

4 I think the issue before the Court right now is whether  
5 or not this new information changes the defense position  
6 or if they need time to address with Mr. Bush where  
7 they're standing.

8 I think today is the first day that there's been, at  
9 least from the defense perspective, a definite answer, and  
10 I do know that the first time that I have heard  
11 definitively that the outcome of this trial.

12 THE COURT: Will have no effect.

13 MS. FITZGERALD: Will have no effect is certainly  
14 today. So I believe the issue before the Court is whether  
15 or not giving credence to due process for the defendant to  
16 be properly advised prior to trial is certainly the  
17 defense counsel wants more time to do that. I think the  
18 Court's going to have to consider that in light of the new  
19 information.

20 I don't know if they're going to make that request or  
21 not. We had discussed some of this Friday. If there was  
22 new information, they would want more time. From the  
23 State's perspective, we, obviously, our main goal in any  
24 trial, and I think it's any goal whether it's the Court,  
25 the State or the defense, is to have a clean trial and not

1 have to do something twice, and from the State's  
2 perspective that's my main concern.

3 If they want to challenge the jurisdiction issue, I  
4 think we need some time to explore that. I don't agree  
5 with Mr. Trageser, but, you know, if they want time to  
6 explore that, I guess the State's in the position of not  
7 having to do something twice that involves a child that,  
8 you know, we give some latitude to defense to explore what  
9 they want to based on the new information they have this  
10 morning.

11 THE COURT: Well, first of all, I think I've got, in  
12 effect, a motion that challenges the jurisdiction, and if  
13 it's a correct position, if the defendant is correct this  
14 Court doesn't have jurisdiction, then I wouldn't have any  
15 power or authority to do anything, grant a continuance or  
16 I couldn't do anything. I have no jurisdiction. I would  
17 be -- I would have no more authority than the man on the  
18 street to affect this trial.

19 So I guess the first thing is the Court would have to  
20 decide whether or not it has jurisdiction to do anything,  
21 and then if it does, to determine what it's being  
22 requested to do by the parties, and based on the merits,  
23 make a decision.

24 There's some decisions that the Court may have to make  
25 whether or not the parties even bring it. If the Court's

1       aware of circumstances it believes, and I don't know that  
2       need to be addressed whether the parties think so or not,  
3       the Court might have an obligation based on its power and  
4       its obligation to actually consider it on its own. I  
5       forget what they say -- I don't know what it is, but  
6       whatever the word is, it isn't in alter boy Latin, but  
7       it's there someplace, and that would be that I would have  
8       to possibly even address that.

9       So the first question jurisdiction, I think we have to  
10      determine it's been challenged. Is there a motion at this  
11      time to dismiss on lack of jurisdiction?

12      MR. TRAGESER: Yes, and if I may just supplement the  
13      record in support of this.

14      I'm referring to Mr. Mitchell's letter dated May 23rd  
15      to Ms. Conrad, last sentence, and as part of the court  
16      file, since there's no specific requirement that  
17      revocation hearings be held prior to the Governor exercise  
18      of her powers. If the Governor chooses to do so, I'll  
19      promptly advise you.

20      He's under the custody of the Governor. Once he was  
21      pardoned, he was under the custody of the Governor, and  
22      the Governor has the power, and they've admitted to  
23      reconsider their decision. Once he hit that pardon, he's  
24      just not under general custody of DOC. Once he got  
25      pardoned, he's under the custody of the Governor.

1 THE COURT: I'm sorry to interrupt. Would you just  
2 point to which page? I've got the letter. May 4th  
3 letter; is that right?

4 MR. TRAGESER: May 23rd letter from Mr. Mitchell.

5 THE COURT: Oh, May 23rd. That's why I wasn't finding  
6 it. I got the May -- are they in sequence here? I got a  
7 May 24th. I got a May 17th. I don't know if I have the  
8 May 23rd letter from the Governor, but I thought I read  
9 that.

10 Read that again for me, please.

11 MR. TRAGESER: May 23rd, '06 from Mr. Mitchell. Last  
12 paragraph, "Since there is" -- I begin I note the Clemency  
13 and Pardons Board declined to provide Mr. Bush a hearing  
14 on the pardon revocation because it doesn't have the  
15 authority to advise the Governor on the issue. So when we  
16 asked for the Clemency and Pardons Board that actually  
17 granted the commutation in the first place, we asked them  
18 for a revocation hearing because the Governor denied us  
19 one.

20 They deferred to the Governor, and they said we have no  
21 power now because he's under the Governor's pardon even  
22 though the Board was involved in the commutation in the  
23 first place. They defer to the Governor. They say they  
24 are powerless to do anything because this is the  
25 Governor's issue.

1 "So since there is no" -- and it goes on. "Since there  
2 is no specific requirement revocation hearings be held  
3 prior the Governor's exercise of her revocation powers, if  
4 the Governor chooses to do so, I'll promptly advise you."

5 I should, also, note that Mr. Bush, because of this  
6 alleged offense, there was a violation of his probation.  
7 When he was pardoned, he was on community custody. There  
8 was a detainer that was issued. That was lifted, and he  
9 had bond on this case. We set a bond OR hearing the day  
10 before we came in to argue, and we had the family members  
11 lined up.

12 The Governor, by virtue of her order, directed the DOC  
13 to detain him. He's on a Governor detainer whether she --  
14 whether anybody out of their office wants to call it a DOC  
15 detainer, and you'll see in our letter we accuse the  
16 Governor's office from inappropriately issuing the  
17 detainer, questioning the powers and the wisdom and the  
18 appropriateness of directing a CCO to issue a detainer who  
19 had just lifted the detainer on this man a couple of weeks  
20 prior.

21 So because of the detainer, because of what's  
22 referenced in this letter, he's under the jurisdiction of  
23 the Governor. This is a unique animal, so to speak, in  
24 terms of procedure, and I'm not sure anybody can do  
25 anything but the Governor at this point with all due

1       respect to Your Honor.

2       THE COURT: Once the revocation has been emphatically  
3       stated and confirmed with definitive dates, doesn't that  
4       just back everything up to the way it was before the  
5       pardon?

6       MS. FITZGERALD: Well, if I can respond just to that  
7       point by Mr. Trageser.

8       I think that it's just appropriate to argue from a  
9       letter that would have been written during a time period  
10      when revocation was still an open question. After May  
11      30th, according to what Mr. Mitchell said this morning,  
12      that was not an open question anymore.

13      THE COURT: It was an official revocation.

14      MS. FITZGERALD: She had made her decision, and as of  
15      May 30th the revocation had been, if you will, perfected,  
16      and he was no longer in a situation where the Governor was  
17      going to consider anything else because she had made her  
18      decision. Prior to her making her decision, I think  
19      defense may have had an argument, but that's not where we  
20      stand before this Court today.

21      Where we stand before this Court today is that this is  
22      a defendant who's back serving an original sentence, and I  
23      don't believe that and I especially believe that's the  
24      case if you take Mr. Mitchell's comments regardless of  
25      what happens in this hearing, it doesn't affect the

1 revocation. I take that to mean they have released any,  
2 if you will, hold or jurisdiction on making this decision,  
3 and if, you know, certainly if there's case law out there,  
4 there may very well be. I'm not equipped at this point to  
5 answer those issues.

6 THE COURT: We got to get this thing going. Last word.

7 MR. TRAGESER: We are held on Her Honor's detainer at  
8 this point in time, and that's the fact, and that can't be  
9 ignored, and since it is the Governor's detainer, again,  
10 I'm not sure anybody can make a move without the  
11 Governor's position.

12 THE COURT: If an individual is under Governor's  
13 retainer and commits a crime, you're saying the State  
14 doesn't have any authority to file charges and go forward  
15 with the prosecution of those?

16 MR. TRAGESER: That's what I'm saying. Yes, Your  
17 Honor, not without the Governor's position. I think they  
18 need a Governor's warrant akin to out-of-state matters. I  
19 think they need the Governor's permission is what I'm  
20 saying.

21 THE COURT: Do you have any position on that? I know  
22 we haven't briefed it, and it's kind of a, you know, in  
23 street terms for the Court, it's like huh? I mean, I  
24 recognize the jurisdictional issue.

25 First of all, the Governor -- at this time, the

1 Governor is claiming that this person is revoked and  
2 saying go back to jail, and it sounded from the  
3 information from Mr. Mitchell this morning as he had  
4 defined speaking on behalf of the Governor, it's in the --  
5 it's analogous to a nunc pro tunc. In other words, he's  
6 clarifying today what is in effect since May 4th to become  
7 effective May 30th. He said what the status is today in a  
8 way that that would have been the status from May 30th.  
9 That's how I understand his comment, and then in the  
10 January 4th letter, Mr. Bush is free to consider plea  
11 agreements and or go to trial.

12 That, to me, is further indicative of the Governor's  
13 lack of jurisdiction over this trial, these issues and  
14 this Court's jurisdiction to hear them. That is what I'm  
15 hearing. That's how I'm seeing this without the benefit  
16 of briefing and without the benefit of any other  
17 authority. I'm just -- that's how I see it.

18 MR. TRAGESER: If this -- if we not to obstruct justice  
19 filed a habeas corpus petition today and filed it in the  
20 Appellate Court or Supreme Court of this state or even  
21 federal court, would the Court believe now that we're in  
22 the Court of Appeals, it has the authority to act, which  
23 is something because that is now our next move, and if we  
24 did file a habeas petition in both courts today, would  
25 Your Honor still feel as though it could move forward?

1 THE COURT: I'd question that.

2 MS. FITZGERALD: The habeas position would be under the

3 cause number, if you will, of the original case. The

4 habeas issue has to deal with the commutation, not this

5 case.

6 THE COURT: Is he being held under this matter?

7 MS. FITZGERALD: Yes.

8 MR. TRAGESER: On this, he's being held on bond.

9 THE COURT: On this case?

10 MR. TRAGESER: Yes, and we struck the hearing because

11 the day before we set the OR hearing and had ten witnesses

12 lined up, the Governor issued the detainer the day before

13 the hearing after it was set, noted and briefed.

14 THE COURT: Could the habeas be issued on this case and

15 the other one?

16 MS. FITZGERALD: I don't know what the grounds would be

17 on this case.

18 MR. TRAGESER: Maybe.

19 THE COURT: I see the distinction, but I'm not so sure.

20 I would be less comfortable. I can tell you that, and I

21 would want some direction from the parties before I would

22 be bold enough to continue them under those circumstances.

23 MR. TRAGESER: Then we would respectfully ask for a --

24 this is a very --

25 THE COURT: And the -- I'm sorry. Go ahead.

1 MR. TRAGESER: There's just no guidance, and we're just  
2 doing our best, and in order to do that, the appropriate  
3 amount of time I would ask for a five-day continuance to  
4 allow us the appropriate time to research the matter and  
5 to file the appropriate habeas petitions, which would take  
6 some time, Judge, and just are not standard forms, not an  
7 easy matter, but we would be able to accomplish that this  
8 week.

9 THE COURT: All right. You think you could? I mean,  
10 my understanding is you've got other matters to deal with,  
11 as well. I know you've got other cases that are going to  
12 be pressuring you, as does Ms. Fitzgerald. I say that in  
13 terms of down the road where we're going and we have a  
14 jury.

15 What do we do with the paneled -- the pool, not the  
16 panel. We don't have a panel. We have a pool. The pool  
17 of jurors wondering why they're not in here, and it's been  
18 45 minutes since they showed up.

19 MS. FITZGERALD: Well, and, Your Honor, I think the  
20 distinction the Court made is an appropriate and an  
21 important one. There's a difference between having a  
22 panel and having a pool at least for double jeopardy  
23 purposes.

24 Again, I believe the law is pretty clear that unless  
25 you swear in the panel that will actually be the trier of

1 fact, jeopardy doesn't attach.

2 THE COURT: Could we release the pool or do we keep  
3 them attached to this case until it's resolved?

4 MS. FITZGERALD: The State's reference would be, Your  
5 Honor, to release the pool if the Court's going to  
6 consider the continuance just because we want to make sure  
7 that we have jurors that are here that in their minds want  
8 to participate and, you know, we will have gone over their  
9 two weeks of service.

10 They've now been sitting around, and I think my  
11 experience at least in doing trials is that jurors tend to  
12 come up with theories on their own and read things into  
13 long delays that can cause problems, and I don't think  
14 we're anywhere near getting to individual questionnaires  
15 with this issues.

16 My position on the continuance is, again, it's the  
17 State's position that if the Court has concerns about  
18 Mr. Bush's ability or his counsel's ability to properly  
19 advise him given the new information this morning, which I  
20 think at a minimum probably the newest information is that  
21 the outcome of this trial does not affect the revocation.  
22 I don't believe, and certainly I'll defer to defense  
23 counsel because they're much more versed in the letters, I  
24 don't believe in my recollection that's ever been stated  
25 in any of the prior correspondence. Certainly, that alone

1 is an issue that directly impacts decisions the defendant  
2 may make on this trial. I would agree that that's  
3 actually an issue directly related to what I viewed the  
4 Court's concerns were, which were that the defendant be in  
5 a position to receive effective assistance of counsel.

6 That's the only thing, at least from the State's  
7 perspective, that I think we have a position to take, and  
8 when I say State, certainly I'm speaking only for the  
9 State of Washington and the County and my office  
10 prosecuting this.

11 I've remained silent and have not gotten involved in a  
12 large extent to the commutation issue, but I do believe  
13 that that directly relates to this trial. To say that it  
14 doesn't have an impact is certainly new information that I  
15 don't believe defense had before.

16 A five-day continuance is brief. I would certainly be  
17 objecting to any time past that. I'll leave it to the  
18 Court's discretion. If the Court views in light of this  
19 new information and the defense requests certainly if the  
20 Court wanted briefing on the jurisdiction issue, I'd need  
21 some time to become versed in that, and so I won't object  
22 to the Court doing that if it feels in its discretion that  
23 there is new information that counsel needs to digest and  
24 work with Mr. Bush to make decisions.

25 Again, just for the issues that deal with this trial

1 and the defendant's due process rights for that, I think  
2 his notice of rights as to the effects of trial have been,  
3 if you will, perfected as of today, and I think only as of  
4 today, at least as to the issue of what will happen with  
5 regards to this trial, but certainly I would agree that's  
6 not information that I've seen before this date.

7 THE COURT: Just let me make -- well, go ahead briefly.  
8 Let me just make this comment so you know the Court's  
9 thoughts on this before you speak.

10 I don't know if you picked up on it, but the burning or  
11 nitro issue in my mind coming into this morning was what  
12 is the position on the revocation with different potential  
13 outcomes as a result of this trial. Where is the  
14 Governor's position? I wanted to know that. I wanted to  
15 know that because I felt the defendant had a right to seek  
16 counsel after the certainty of that was known to the  
17 Court.

18 Whether it's correct or whether it's not correct, it  
19 wasn't my inquiry, and it isn't before me. I can't deal  
20 with that, but what I can deal with is the fact that we  
21 have now a definitive position taken on the revocation  
22 that the Governor referenced in the May 4th letter of '06,  
23 and that is that it is official. That it is effective as  
24 of May 30th of '06, and that it will not change based on  
25 the outcome of this trial. Those were the real matters

1       that were in my mind.

2               Now, that creates other issues that need to be  
3       addressed I would expect by Mr. Trageser and Ms. Polin as  
4       they further advise their client, and they're in a pickle  
5       right now to make some decision. So that's where I am  
6       right now.

7               Regarding the jurisdiction, I feel that the Governor by  
8       their current responses, including the January 4th, '07  
9       letter, does not have any intent nor expects nor has  
10      demanded that they have any jurisdiction over Mr. Bush at  
11      this point. I think I do have jurisdiction, but that  
12      hasn't been briefed. That's just based on comment and  
13      argument without authority, but with some pretty good  
14      facts, but I'm not certain on that.

15              My gut's telling me that this Court probably would have  
16      jurisdiction, and I'm not convinced it doesn't. I mean, I  
17      can't do anything on this if I didn't have jurisdiction.

18              So at this point pending a motion with further  
19      information, I'm proceeding as though I do have  
20      jurisdiction.

21              Now, Mr. Trageser, your comments. You're seeking --  
22      what is your intent? What is your request of the Court  
23      now with their position that I just stated?

24              MR. TRAGESER: I am seeking a continuance to allow us  
25      to properly brief the issue and bring it to the Court's

1 attention. Ms. Fitzgerald's comments to the Court that  
2 she had no objection to a five day because she does not  
3 want to do it again, neither do we, Judge. Nobody wants  
4 to do this again, and I feel that the motion made by me  
5 hopefully is well taken by the Court.

6 I don't have the substance in terms of legal basis to  
7 back it up. We are operating in unchartered, undefined,  
8 no procedural rules, very little law to guide us on these  
9 issues. I'm not just throwing things at the Court. I  
10 really do, and I know the Court has made a finding that  
11 the Governor's office has now revoked, but this is akin to  
12 almost I would say that this Court needs almost a mandate  
13 from this from the Governor's office as it would from the  
14 Court of Appeals that is handling the matter.

15 The Governor has the legal authority to deal with  
16 revocation matters, and I appreciate your private attorney  
17 going on the record and indicating she speaks to the  
18 Governor, but we need -- and I know the Court has made its  
19 finding, but with all due respect, we almost, in my  
20 opinion, need a mandate from the Governor allowing us to  
21 operate.

22 If the Court grants the continuance, this is my  
23 position. I don't want to have a five-day continuance to  
24 be and then contact the Court Thursday afternoon on an  
25 emergency motion and saying, "Judge, we've been in the law

1 library for three days, and we're trying to put this  
2 together. We've been across the country for guidance and,  
3 you know, we're trying to put something together that has  
4 never been given before." If you do give us, I'm changing  
5 my position that it could be in five days.

6 THE COURT: Your position was the habeas was the five  
7 days?

8 MR. TRAGESER: Yes, but and even that may have been --

9 THE COURT: Optimistic.

10 MR. TRAGESER: Optimistic. And so my position is that  
11 what we presented to the Court, I hope the Court doesn't  
12 consider to be stall tactics or frivolous in any way. I  
13 do think they need to be properly briefed.

14 So I'm asking for a 30-day continuance to properly  
15 brief all of the issues, as well as our office to make  
16 consideration of bringing a habeas because I have to tell  
17 you, Judge, regardless of Mr. Mitchell's position, and  
18 this is what Ms. Conrad was doing by making the Offer of  
19 Proof, there is a lot of documentation in the files that  
20 would lead people to believe that that revocation had not  
21 necessarily been official.

22 We contacted Dennis Weston, his CCO. They didn't have  
23 any notice of it. I don't believe the DOC had any notice  
24 of. I think Ms. Fitzgerald would comment she was not sure  
25 he was revoked.

1 THE COURT: By my statement, I wasn't saying that it  
2 was a correct analysis.

3 MR. TRAGESER: Yes, sir.

4 THE COURT: I was saying that it was the Governor's  
5 definitive analysis.

6 MR. TRAGESER: Yes, sir.

7 THE COURT: Subject to whatever. I wasn't -- there was  
8 no -- I wasn't condoning that as somehow correct or I be  
9 correct.

10 MR. TRAGESER: And we just -- and had we believed in  
11 good faith that this revocation was official as they say  
12 it was, we would have brought the habeas at that time.

13 Hopefully, the file reflects due diligence on my  
14 office's part to understand from the Governor's office  
15 what was happening to Mr. Bush's situation, and I'll be  
16 honest with you, and I don't mean to speak to  
17 Ms. Fitzgerald. If all the parties were here, including  
18 Weston, his CCO, everybody would say we were not sure  
19 whether or not this revocation had occurred. Everybody  
20 would say that in good faith, and it was -- and I think as  
21 a direct result of just a pure lack of communication and  
22 courtesy to respond to us from the Governor's office that  
23 has put us in this position. We have been trying and  
24 trying and trying, and so this position is not being  
25 brought at the last minute.

1           So I'm requesting a 30-day continuance to accomplish  
2           briefing and a motion to the Court regarding jurisdiction  
3           and to make consideration of a habeas, which we always  
4           have considered, but in my mind until today, I had not  
5           concluded that my client's revocation was effective, and  
6           there are a lot of reasons why the letters are ambiguous  
7           from Mr. Mitchell's office.

8           THE COURT: And it may or may not be. We don't know.

9           MR. TRAGESER: That's my request, Your Honor.

10          THE COURT: Whether it's effective or not, remains to  
11          be seen. What we do know the Governor's office intended  
12          it to be effective. That's what I needed to know.

13          Ms. Fitzgerald, there's been a Motion for Continuance  
14          of 30 days. Does the State object? I know you don't  
15          object necessarily to the continuance, but now we've taken  
16          a five day and popped a multiplier on it. So does the  
17          State have any comment to make referencing the request for  
18          a 30-day extension?

19          MS. FITZGERALD: The State will leave it to the Court's  
20          discretion knowing the Court may want that briefing to  
21          make decisions. I certainly can't impose into the mind of  
22          the Court.

23          The only thing I would ask if we're going to do this  
24          that we set up some sort of schedule for hearings in those  
25          things so that at the end of the 30 days if we're in a

1 position we're trying this case, that's what we do. We're  
2 getting close to this being a year old, and we have to,  
3 also, balance the fact we have a child witness that's  
4 waiting obviously.

5 So I'll leave it to the Court's discretion. I'm not  
6 sure what information the Court may want to make its  
7 decisions at this point.

8 THE COURT: Okay. Thanks.

9 You know, Mr. Trageser made a comment that we're in  
10 uncharted waters, and, I mean, there's a lot of ways to  
11 put that, but I think he's right. I haven't done any  
12 particular personal research other than very superficially  
13 only to the extent of what I needed to understand from my  
14 own purposes and this case and the due process questions  
15 that arose in my mind.

16 In my limited experience, and it's much more limited  
17 than the parties, I recognize that, but I haven't come  
18 across this issue before. I haven't had to deal with this  
19 issue before that we're dealing with now.

20 Because I haven't had any clear direction, what I  
21 really don't want is a rapid time frame that's going to  
22 reduce it so for efficiency purposes and it turns out it's  
23 not efficient. If we don't give it enough time, the time  
24 we've given it is kind of lost because then you're  
25 struggling to put together something you don't have a well

1 put together product with the understanding that you've  
2 had time enough to review it, analyze it, get it down on  
3 paper and submit it.

4 So this can't turn into a rough and tumble alley fight  
5 with no rules and process to go on. I want to have some  
6 structure at least to understand where we're going, and I  
7 think to get that we've got to have a 30-day extension,  
8 and it doesn't -- it doesn't make me real comfortable  
9 because we have allegedly a victim throughout, a child,  
10 that needs to have this resolved, and that child's family  
11 and the people involved, and we have a defendant that  
12 needs to get resolved because there's a ton of stuff  
13 riding on it, but doing it time and time again isn't a  
14 resolution.

15 So I'm going to go with the 30 days. I do think we  
16 need a schedule of some sort. Lord knows we have enough  
17 to deal with without structure. We certainly need a  
18 schedule to at least have some structure on what we're  
19 getting and when. I've got some notes here that I'm not  
20 sure I'm understanding.

21 Yeah, February 5th is what I had looked at. The  
22 February 5th, the continuation date will be the trial date  
23 of February 5th of this year. Here's what I'm confused  
24 about.

25 I didn't understand what I was getting because it

1       wasn't well written. It was because it wasn't clicking  
2       in.

3       Now, regarding the scheduling, I guess before we do  
4       that, we have to know what is the goal here. This  
5       continuance is being given so that counsel can move -- so  
6       that defense counsel can have an opportunity to research  
7       and advise and work with his client or her client and  
8       properly advise them of where the legal status is now and  
9       what the option is and tactics should be and to provide  
10      time for the defendant to file any motions and briefing  
11      that they have regarding jurisdiction, regarding the issue  
12      of I guess it's primarily a jurisdictional matter that  
13      right now is concerning Ms. Polin and Mr. Trageser.

14      MR. TRAGESER: That's true, and I think due diligence  
15      on my office's part now dictates getting to the Court of  
16      Appeals on the revocation, and so now that I'm on notice,  
17      we need to, also, file our habeas petition.

18      THE COURT: And do that, and for the record, there was  
19      a couple of occasions Mr. Trageser referenced that this  
20      was not being done and hope it was not being interpreted  
21      by me as a delaying tactic, and I certainly don't.

22      I want the record to be clear. This is a very  
23      difficult matter with pitfalls all over the place that  
24      I've never been in, so I needed as much assistance in that  
25      area as I could get, and I rely on counsel to get it, and

1 I have no belief at all nor any reason to believe that  
2 there's been any delay.

3 Now, the schedule motions should be filed so that they  
4 can be heard I would think the first morning of trial or  
5 would you want to do it before that? If we did that, what  
6 we'd have to do is bring the jury in at 1:30. We may  
7 bring them in in the morning and do the questionnaires  
8 again, and any motions, if we did the motion before that  
9 time, we would know better where we are on Monday and  
10 where we are with jurors. I mean, should there be  
11 results, we don't need jurors to be brought in. It would  
12 be benefit to both the jurors and the parties and money  
13 being spent to bring in that panel, but I don't know where  
14 we -- Friday, is there any Friday time?

15 What is your thought on the motion with the  
16 understanding this thing is going to start on the 5th,  
17 when would be -- when would you think, Mr. Trageser, you  
18 would be in a position knowing you got to serve, give time  
19 for the State to respond and then your reply would have to  
20 be here at least a day before. I'm willing to shorten up  
21 on the time limits, but you got to give the State time  
22 enough to observe what you've done.

23 MR. TRAGESER: May we have 14 days from today's date?

24 THE COURT: To get your stuff in?

25 MR. TRAGESER: Yes, sir.

1 THE COURT: And give the State five working days to  
2 respond? If it was 14 days, then you'd be getting that  
3 stuff in be due on the 19th. How about on the 16th?  
4 That's a Friday.

5 MR. TRAGESER: Yes, sir.

6 MS. FITZGERALD: I think the 19th is a Friday, isn't  
7 it, Your Honor?

8 THE COURT: I'm in February. No, we're February.

9 MS. FITZGERALD: We're February 5th for the trial.

10 THE COURT: Let me take a look here. Oh, I'm sorry.  
11 That's right. The Friday would be the 2nd. The Friday  
12 we're thinking of is the 19th. Thank you. I don't know  
13 what time we have. We have time on the 19th at 1:30. No,  
14 we don't need that. That's the time for the briefing  
15 you're talking about.

16 MR. TRAGESER: Yes, sir.

17 THE COURT: And then you're thinking about if you have  
18 five days, let's say you could get it in on the 29th,  
19 which would be a Monday to give you some, if you need,  
20 time to get that in with the reply to me by the 31st, if  
21 any is coming, and then on the 2nd of February, do we have  
22 any time on the 2nd of February?

23 THE BAILIFF: There's only a half an hour available on  
24 the 2nd of February.

25 THE COURT: When is that?

1 THE BAILIFF: I believe that was the 11:30.  
2 THE COURT: Well, that's going to -- how much time  
3 would you expect to need?  
4 MR. TRAGESER: To reply?  
5 THE COURT: No, argument time.  
6 MR. TRAGESER: Oh, argument. I wouldn't expect we  
7 would need more than a half hour to an hour, no more than  
8 an hour.  
9 MS. FITZGERALD: If I've done extensive briefing on an  
10 issue, Your Honor, I'd probably just leave it up to the  
11 Court to let me ask questions, and I think a half hour.  
12 THE COURT: Let's docket it with that half hour time  
13 slot, and if it goes over, we'll just have to keep the  
14 staff here and get it done or break for lunch and come  
15 back a half hour earlier.  
16 MS. FITZGERALD: That's the 2nd of February for the  
17 motion?  
18 THE COURT: February 2 at 11:30.  
19 MS. FITZGERALD: And then defense counsel's briefing is  
20 due?  
21 THE COURT: On the 19th.  
22 MS. FITZGERALD: Okay. And the State's is due the  
23 29th?  
24 THE COURT: And the State's is due, yes, and Mr.  
25 Trageser has through the 31st for reply.

1 MR. TRAGESER: Okay.

2 THE COURT: That's a Wednesday.

3 MR. TRAGESER: Yes, sir.

4 THE COURT: This is more of a mundane, but I'm going to  
5 go down and address -- we'll probably bring the jurors up  
6 here and let them know they're being released. The  
7 problem is they'll be coming in. They're coming in in  
8 batches of six. I don't want to bring them all down, and  
9 I don't want to hold them all here to wait until they're  
10 all here.

11 So I don't know if you want to be here when I simply  
12 tell them that this matter has been continued beyond the  
13 date that we're comfortable holding them, and the parties  
14 have allowed me and requested me to release them from  
15 their obligation and with the thanks of the parties and  
16 the Court for their service.

17 MR. TRAGESER: We would not need to be here for that,  
18 Your Honor.

19 MS. FITZGERALD: The State doesn't need to be here.

20 THE COURT: I'll take care of that.

21 MR. TRAGESER: Thank you.

22 THE COURT: So they understand this is not an issue  
23 that was created by the parties so that they don't get the  
24 feeling that they've been -- they didn't need to come  
25 back. I'll do the best I can in that regard.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

With that, are there any other matters we need to  
address before we're in recess?

MR. TRAGESER: No. Thank you for the Court's time.

THE COURT: You're welcome. We're in recess.

(END OF PROCEEDINGS.)

1 I, HEATHER M. GIPSON, do hereby certify:

2 That I am an Official Court Reporter for the Spokane  
3 County Superior Court, sitting in Department No. 11, at  
4 Spokane, Washington;

5 That the foregoing proceedings were taken on the date  
6 and place as shown on the cover page hereto;

7 That the foregoing proceedings are a full, true and  
8 accurate transcription of the requested proceedings, duly  
9 transcribed by me or under my direction.

10 I do further certify that I am not a relative or,  
11 employee of, or counsel for any of said parties, or  
12 otherwise interested in the event of said proceedings.

13  
14 DATED this 2nd day of October, 2007  
15  
16  
17  
18  
19  
20  
21  
22

23 

24 HEATHER M. GIPSON, RPR, CCR No. 2978  
25 Official Court Reporter  
Spokane County, Washington